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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 GERALD W. ,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

CASE NO. 3:19-cv-0379-BAT

**ORDER REVERSING THE  
COMMISSIONER'S FINAL DECISION  
AND REMANDING FOR FURTHER  
PROCEEDINGS**

12 Plaintiff appeals the ALJ's decision finding him not disabled. The ALJ found adjustment  
13 disorder with depression and anxiety, personality disorder, generalized anxiety disorder, panic  
14 disorder, agoraphobia, major depressive disorder, bipolar disorder, alcohol use disorder and  
15 marijuana use disorder are severe impairments; plaintiff has the RFC to perform work at all  
16 exertional levels; has the concentration to perform simple routine tasks in 2 hour increments; can  
17 work superficially and occasionally with the general public; can interact occasionally with a  
18 supervisor; and can be in the same room as co-workers but cannot coordinate work activity with  
19 co-workers; and that plaintiff is not disabled because he perform past relevant work and other  
20 jobs in the national economy. Tr. 23-30.

21 Plaintiff contends the ALJ failed to give clear and convincing reasons to reject his  
22 testimony his panic attacks are debilitating and that the case should thus be remanded for  
23 calculation of an award benefits. Dkt. 10. The Court **REVERSES** the Commissioner's final  
decision and **REMANDS** the case for further administrative proceedings.

1 **DISCUSSION**

2 The Court will reverse the ALJ's decision if it is not supported by substantial evidence in  
3 the record or if the ALJ applied the wrong legal standard. *Molina v. Astrue*, 674 F.3d 1104, 1110  
4 (9th Cir. 2012). The Court will not reverse the ALJ's decision on account of errors that are  
5 harmless. *Id.* at 1111. Where the evidence is susceptible to more than one rational interpretation,  
6 the Court must uphold the Commissioner's interpretation. *Thomas v. Barnhart*, 278 F.3d 947,  
7 954 (9th Cir. 2002).

8 **A. Evaluation of Plaintiff's Testimony**

9 Plaintiff contends the ALJ should have accepted his testimony his "anxiety prevented him  
10 from doing things by himself"; he has severe anxiety being around others; he has trouble  
11 thinking straight and his concentration problems prevent him from performing complex tasks; his  
12 anxiety is the primary reason he cannot perform work; his medications are not working well; and  
13 that he has reached the point where he cannot leave his house to go to work. Tr. 10 at 2-3.

14 Plaintiff contends the ALJ rejected his testimony without explaining which portions of  
15 his testimony was being rejected and without stating with specificity the evidence that  
16 contradicted his testimony. *Id.* at 3. Plaintiff argues the ALJ erroneously made general findings  
17 that the medical evidence and plaintiff's activities undercut plaintiff's testimony. *Id.* at 4.  
18 Plaintiff further argues that some of reasons the ALJ provided do not undercut his testimony and  
19 that the ALJ's determination to discount his testimony consequently is not supported by  
20 substantial evidence. *Id.* at 4-5.

21 The ALJ is responsible for weighing a claimant's allegations and resolving ambiguities in  
22 the evidence. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). When assessing a  
23 claimant's allegations, the Commissioner will consider all of the available evidence and will

1 apply several factors in determining the extent to which a claimant's alleged limitations can  
2 reasonably be accepted as consistent with the medical evidence and other evidence. 20 C.F.R. §  
3 404.1529(c). "In considering the intensity, persistence, and limiting effects of an individual's  
4 symptoms, we examine the entire case record, including the objective medical evidence; an  
5 individual's statements about the intensity, persistence, and limiting effects of symptoms;  
6 statements and other information provided by medical sources and other persons; and any other  
7 relevant evidence in the individual's case record." SSR 16-3p, available at 2017 WL 5180304 (as  
8 amended). Clear and convincing reasons are required to reject a claimant's testimony. *Garrison*  
9 *v. Colvin*, 759 F.3d 995, 1015 n. 18 (9th Cir. 2014).

10 Here, the ALJ noted plaintiff testified he was disabled to due to mental symptoms  
11 including depression, anxiety, panic attacks, racing thoughts and agoraphobia. Tr. 26. The ALJ  
12 further noted plaintiff reported limitations in concentration and interacting with people,  
13 particularly large numbers and strangers, and that plaintiff stated he had limitations in memory,  
14 completing tasks, understanding, following instructions, dealing with stress and leaving home.  
15 *Id.* at 26-27.

16 The ALJ rejected plaintiff's testimony about the severity of his symptoms for two  
17 reasons. First the ALJ found the medical evidence is "not entirely consistent with the claimant's  
18 allegations of debilitating mental symptoms." *Id.* at 27. The ALJ found plaintiff's treatment  
19 history indicated plaintiff's memory was abnormal only on an intermittent basis; that his ability  
20 to concentrate was generally normal with only occasional abnormal findings; that his insight and  
21 judgment were fair to normal with some exceptions; that his thought process and thought content  
22 was normal. *Id.* These findings address plaintiff's claims about his memory, insight and  
23 judgment and thought process. However, they do not address plaintiff's testimony about the

1 severity of his depression, anxiety, panic attacks, racing thoughts and agoraphobia. Hence while  
2 the RFC determination may account for plaintiff's limits regarding memory, concentration and  
3 inability to perform complex based upon the rational the ALJ gave above, the same cannot be  
4 said about other work place limitations plaintiff claimed were caused by his mental health  
5 problems. Rather all that is before the Court is the ALJ's implicit acknowledgment that  
6 plaintiff's anxiety, depression and agoraphobia are limiting in that he can only perform work that  
7 involves superficial and occasional contact with the public, occasional contact with supervisors  
8 and no coordinated work with co-workers. But the ALJ provided no clear and convincing  
9 rationale to reject plaintiff's testimony about these limiting symptoms which according to  
10 plaintiff are more severe than the ALJ found and which render him unable to perform the jobs  
11 the ALJ found he could perform.

12         The ALJ also discounted plaintiff's testimony he can only prepare simple meals and  
13 cannot handle money. Tr. 27. The ALJ found the testimony was inconsistent with how plaintiff  
14 has no problems with tasks of personal care; that he vacuums, helps with laundry and can clean  
15 his small apartment; and that he goes to the store one to three times a month with his fiancée. *Id.*  
16 Again the ALJ's findings do not address plaintiff's claim that he cannot work because of the  
17 severity of his anxiety, depression and agoraphobia; there is nothing inconsistent with plaintiff's  
18 ability to clean a small apartment or go shopping with a close accompanying friend and  
19 plaintiff's claims his mental health problems prevent him from performing gainful work activity.

20         In sum, the ALJ failed to provide clear and convincing reasons to discount plaintiff's  
21 testimony about the severity of symptoms caused by depression, anxiety and agoraphobia. The  
22 ALJ acknowledged these symptoms limit plaintiff's ability to perform work, as set forth in the  
23 RFC, but did not provide a basis upon which the Court may review that determination. The Court

1 accordingly finds the ALJ harmfully erred as the RFC determination does not account for all  
2 mental health limitations claimed by plaintiff.

3 **CONCLUSION**

4 The Court **REVERSES** the Commissioner's final decision and **REMANDS** the case for  
5 further administrative proceedings. Although plaintiff argues for an award of benefits, the Court  
6 finds plaintiff's testimony needs to be reassessed which is a task that appropriately lies with the  
7 ALJ. Further proceedings are thus needed and appropriate. On remand the ALJ will reevaluate  
8 plaintiff's testimony about the severity of symptoms caused by his mental health conditions,  
9 expand the record and redetermine plaintiff's RFC as needed, and proceed to the remaining steps  
10 as appropriate.

11 **DATED** this 8th day of August, 2019.

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13 BRIAN A. TSUCHIDA  
14 Chief United States Magistrate Judge  
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